UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re: Involuntary Chapter 7

THE BAY CLUB OF NAPLES II, LLC, Case No. 9:19-bk-07038-FMD

Alleged Debtor(s).[1]
_____/

ACRES CAPITAL, LLC'S SUMMARY OF ALLEGED DEBTORS' DEFAULTS

ACRES CAPITAL, LLC, a New York limited liability company, as Administrative Agent (herein "ACRES") for the Alleged Debtors' construction lenders, by and through its undersigned counsel, and pursuant to the Court's instructions submits the following:

1. At the conclusion of the evidentiary hearing on October 25, 2019, the Court requested that ACRES file a pleading setting forth the alleged debtors' defaults that, if not cured or waived, would result in a breach of the Settlement Agreement, dated May 17, 2019, and the First Amendment to Settlement Agreement, dated June 5, 2019, both effective as of June 13, 2019 (collectively the "Settlement Agreement") [alleged debtors' Trial Exhibits 29 and 30, respectively] and ACRES' rights to enforce the default remedies thereunder.

2. The primary default remedies (collectively, the "Default Remedies") include: (i) loss of benefits from the $6.0 additional advance ("Additional Advance"); (ii) loss of the benefit of the reduced loan amount of $19.5 million (the "Stipulated Loan Amount"); and (iii) the entry of a Stipulated Final Judgment of Foreclosure, Damages on Notes, and Guaranty (the "Consent

[1] There are four pending and related cases before the Court: two involuntary chapter 7 cases and two voluntary chapter 11 cases ("Related Cases"). The Related Cases are not jointly administered. The related involuntary chapter 7 cases are styled: *In re Bay Club of Naples, LLC,* 9:19-bk-07035-FMD, and *In re Bay Club of Naples II, LLC,* 9:19-bk-07038-FMD; the related voluntary chapter 11 cases are styled: *In re The Bay Club of Naples, LLC,* 9:19-bk-10116-FMD, and *In re The Bay Club of Naples II, LLC,* 9:19-bkc-10117-FMD.

Judgment") against the settling parties, including the alleged debtors, for all sums due ACRES as requested in the foreclosure litigation.

3. The alleged debtors' defaults under the Settlement Agreement are identified in Exhibit 1 attached hereto.[2] Section A of Exhibit 1 is an itemized list of the alleged debtors' closing deliverables that are conditions precedent to closing on the Additional Advance under the Settlement Agreement. Failure to deliver any one or more of these closing deliverables constitutes a default under the Settlement Agreement that will give rise to ACRES' right to enforce the Default Remedies.

4. Section B of Exhibit 1 is an itemized list of existing defaults by the alleged debtors under the Settlement Agreement that are subject of being cured or waived by ACRES. If not cured or waived, the defaults identified in Exhibit B will separately give rise to ACRES' right to enforce the Default Remedies.

5. Section C of Exhibit 1 lists other covenant defaults under the Settlement Agreement and underlying loan documents that are not curable. While these defaults are not curable pursuant to the operative documents, ACRES may nevertheless waive such defaults for the limited purpose of permitting the alleged debtors to proceed to close on the Additional Advance under the Settlement Agreement.

6. Without waiving any conditions precedent or defaults, ACRES has agreed to extend the date of closing on the Additional Advance to December 31, 2019. The extension is, for obvious reasons, conditioned upon the dismissal of all pending bankruptcy proceedings over the alleged debtors pending in this Court.

[2] The defaults identified in Exhibit 1 are not exhaustive. ACRES makes such disclosure without waiver of any other defaults or rights and remedies.

7. Assuming all cases are dismissed on December 4, 2019,[3] the extension will provide Mr. Kapila nearly a month to obtain the cooperation and/or compliance from necessary interested parties (namely, Messrs. Zea, Meak, Louro, and Must) to satisfy or cure the foregoing conditions precedent and pending defaults. What will happen next, as they say, has yet to be written.

8. Of course, it is also worth pointing out that, the entry of an Order for Relief on the involuntary petitions (or the failure to dismiss the unauthorized voluntary chapter 11 cases) will create a separate incurable default under the terms of the Settlement Agreement that will give rise to ACRES' right to enforce the Default Remedies.[4]

9. Specifically, the Settlement Agreement is an executory contract which is not subject of being assumed pursuant to 11 U.S.C. § 365 for a variety of reasons, including: (a) the Additional Advance constitutes an non-assumable financial accommodation pursuant to 11 U.S.C. § 365 (c)(2); and, even if that section did not apply (b) it requires a variety of obligations that are only possible to be performed by Mr. Kapila in connection with or ancillary to the state court receivership that cannot be restructured and performed by a different party (i.e. a DIP or trustee) through an assumption of the Settlement Agreement in this case. See, e.g., *In re Morande Enterprises, Inc.*, 335 B.R. 188, 192 (Bankr. M.D. Fla)(executory contracts may not be assumed in part and rejected in part); and *Beach Resort Hotel Corp. v. Wieder*, 79 So.2d 659, 663 (Fla. 1955)("The court cannot, in the absence of fraud or the like recognized equitable ground, reconstruct the contract, for the purpose of making its terms accord with a post contractual conception more suitable to the situation of the parties."). Therefore, the entry of an Order for

[3] ACRES is currently preparing motions to dismiss the voluntary chapter 11 cases based upon arguments made at the hearing on October 25, 2019. ACRES intends to file those motions on or about November 8, 2019, and seek to have them scheduled for hearing along with the other matters set for hearing in the involuntary cases on December 4, 2019.

[4] The enforcement of those rights against the alleged debtors in state court would be subject of the automatic stay pursuant to 11 U.S.C. § 362. Nevertheless, the impact on ACRES secured claim in this case would be the same.

Relief will necessarily result in the rejection of the Settlement Agreement under 11 U.S.C. § 365. As the United States Supreme Court ruled in May, 2019, a debtor's rejection of an executory contract has the same effect as a pre-petition breach of that contract and does not constitute a rescission of the contract. See, *Mission Product Holdings, Inc. v. Tempnology, LLC*, 139 S.Ct. 1652 (2019). Thus, ACRES' right to enforce the Default Remedies will necessarily flow from the entry of the Orders for Relief in these cases.

10. We point this out in response to the petitioners' argument made at the hearing on October 25, 2019, to the effect that the alleged debtors will be irreparably harmed if the cases are dismissed, and subsequently Mr. Kapila defaults on the terms of the Settlement Agreement triggering ACRES' right to enforce the Default Remedies. That is not the case at all.

11. In fact and at law, the consequences associated with the entry of Orders for Relief are the same as an out of bankruptcy default. ACRES will have the right to enforce the Default Remedies. And, as Mr. Kapila noted in his testimony on October 25, 2019, a default does *not* eliminate his exclusive right to file for bankruptcy protection on behalf of the alleged debtors.[5]

12. What *will be lost* by the entry of Orders for Relief, is the opportunity that Mr. Kapila might realize upon the benefits of the Settlement Agreement by obtaining the cooperation and/or compliance from necessary interested parties to satisfy or cure the foregoing conditions precedent and pending defaults. What *will also be lost* by the entry of Order for Relief, is Mr. Kapila's ability to make the alleged debtors whole for the damages associated with these ill-conceived and bad faith involuntary petitions.

[5] In fact, Mr. Kapila agreed to review the purported loan commitment mentioned during the hearing by counsel recently engaged by Mr. Zea to file voluntary cases on behalf of the alleged debtors.

13. And, of course, it is also worth pointing out that the petitioners' arguments in this regard are neither factually nor legally relevant to the Court's analysis of whether the involuntary petitions were properly filed under 11 U.S.C. § 303.

Dated: November 4, 2019.

Respectfully submitted,

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

/s/ Drew M. Dillworth
Drew M. Dillworth, Esq.
Florida Bar Number 0167835
ddillworth@stearnsweaver.com
Museum Tower, Suite 2200
150 West Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3259
Facsimile: (305) 789-2624

- *And* -

Alice R. Huneycutt, Esq.
Florida Bar Number 293105
ahuneycutt@stearnsweaver.com
John N. Muratides, Esq.
Florida Bar Number 332615
jmuratides@stearnsweaver.com
401 East Jackson Street, Suite 2100
Tampa, Florida 33602
Telephone: (813) 223-4800
Facsimile: (813) 222-5089

Counsel for Acres Capital LLC.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document is being filed electronically via the Court's CM/ECF website on November 4, 2019. I further certify that the documents is being served by transmission of Notices of Electronic Filing ("NEF") generated by CM/ECF to those counsel or parties who are registered to receive NEF in this case.

/s/ Drew M. Dillworth
Drew M. Dillworth, Esq.

In re: The Bay Club of Naples, LLC, alleged debtor, pending in the United States Bankruptcy Court, Middle District of Florida, Fort Myers Division, Involuntary Chapter 7, Case No. 9:19-bk-07035-FMD

and

In re: The Bay Club of Naples II, LLC, alleged debtor, pending in the United States Bankruptcy Court, Middle District of Florida, Fort Myers Division, Involuntary Chapter 7, Case No. 9:19-bk-07038-FMD

EXHIBIT 1

DEFAULTS

A. Defaults Based on Deliverables and Conditions Precedent.[1]

	Default	Document
1.	Failure to deliver general release and covenant not to sue from Frank Meak, Louro Capital Lending LLC and Steven Louro (the "Third Party Releases") in the form attached as Composite "C" to the Settlement Agreement to escrow agent 3 business days prior to the Loan Closing Date.	First Amendment to Settlement Agreement, ¶3 which replaced Paragraph 5 of the Settlement Agreement in its entirety.
	Comment: The Settlement Agreement, paragraph 5 originally required the Third Party Releases to be delivered at the time of the Closing of the Settlement Agreement. Borrower and Guarantors were unable to obtain the Third Party Releases prior to Closing and requested additional time to obtain such, resulting in the amended deadline as set forth in the Final Amendment to Settlement Agreement.	
2.	Failure to deliver the release of the mortgage held by Frank Meak and Louro Capital Lending LLC in a form acceptable to ACRES 3 business days prior to the Loan Closing Date.	First Amendment to Settlement Agreement, ¶4, which replaced paragraph 6 of the Settlement Agreement in its entirety. Agreed Order Appointing Receiver, paragraph 24.
	Comment: Frank Meak and Louro Capital Lending LLC executed and delivered a Release of Mortgage, dated February 13, 2019, to escrow agent. On June 6, 2019, Carlo Zampogna, as escrow agent, sent to ACRES written notice confirming that he held the Release of Mortgage. By letter dated August 1, 2019, Robert Soriano, on behalf of	

[1] These defaults are prior defaults by the Borrower for failure to timely close the loan modification by the Loan Closing Date. ACRES has agreed to extend the Loan Closing Date to December 31, 2019 conditioned upon the entry of a final dismissal of the involuntary petitions and dismissal of the voluntary petitions on or before December 31, 2019. If the orders of dismissal are not entered by December 31, 2019, each of the defaults in this section will be valid.

	Default	Document
	petitioning creditors The Rock Custom Homes, Inc., Frank Meak, and Steven Louro (who controls Louro Capital Lending LLC), advised Carlo Zampogna that the authorization to deliver the release from escrow was revoked, and that escrow agent was not permitted to deliver the Release of Mortgage without written consent of his client creditors or final order of a court directing him to do so.	

3.	Failure to deliver proper release of mortgage lien on or before June 6, 2019.	First Amendment to Settlement Agreement, ¶4 which replaced paragraph 6 of the Settlement Agreement in its entirety.
	Comment: Language in release executed by Louro/Meak was deficient for the reasons outlined in Lender's counsel's email to Carlo Zampogna dated July 19, 2019. The release of mortgage lien fails to state that it releases the property described in the Mortgage from the lien of the Mortgage.	

4.	Failure to close on the loan modification within 60 days of entry of the Order Approving Settlement Agreement, on June 13, 2019.	First Amendment to Settlement Agreement, ¶6. which replaced paragraph 13 of the Settlement Agreement in its entirety.
	Comment: The original Closing Date under the Settlement Agreement was June 6, 2019, which date was modified by the First Amendment to Settlement Agreement to be 60 days after entry of the Order Approving Settlement Agreement. Thus, the Loan Closing Date was August 12, 2019. ACRES consented to extend the Loan Closing Date to October 1, 2019 conditioned on the dismissal of the involuntary bankruptcy petitions on or before October 1, 2019. When the September 24, 2019 hearing was continued due to health issues of Bill Must, ACRES agreed to extend the Loan Closing Date to November 1, 2019, again conditioned on the entry of a final order dismissing the involuntary petitions on or before November 1, 2019. A final order dismissing the two involuntary petitions did not occur on or before November 1, 2019. Thus, there is a default for failure to timely close, but also defaults for failure to deliver the Third Party Releases and Release of Meak/Louro Mortgage.	

5.	Failure to deliver the release of lien of the City of Naples for code violation to escrow agent within 3 business days of the Loan Closing Date.	Settlement Agreement, ¶6(g), as amended by First Amendment to Settlement Agreement, paragraph 4.
	Comment: Borrower has not obtained a release of the code enforcement lien.	

6.	Failure to deliver the estoppel letter from The Old Cove Condominium of Naples, Inc. evidencing payment of assessments through the Loan Closing Date.	Settlement Agreement, ¶6(c), as amended by First Amendment to Settlement Agreement, paragraph 4.
	Comment: Borrower has not obtained an estoppel letter from The Old Cove Condominium of Naples, Inc.	

B. Defaults that May Be Curable.[2]

	Default	Document
1.	Failure to provide Receiver within 3 days of appointment all inspection reports performed by Naples Design and Consulting, Inc.	Order Appointing Receiver, paragraph 23. Settlement Agreement, paragraph 18(d).
	Comment: Pursuant to paragraph 18(d) of the Settlement Agreement, any violation of the Agreed Order Appointing Receiver also constitutes a default under the Settlement Agreement.	
2.	Failure to turn over documents related to permits and entitlements.	Settlement Agreement, paragraphs 18(d) and 22. Agreed Order Appointing Receiver, paragraph 19.
	Comment: In addition to a default under paragraph 22 of the Settlement Agreement, this action also violates paragraph 19 of the Agreed Order Appointing Receiver which constitutes an additional default under the Settlement Agreement pursuant to paragraph 18(d).	
3.	Failure to turn over all documents related to construction and failure to provide to Kapila the location of current plans, specifications and drawings within 3 business dates of the Settlement Closing.	Settlement Agreement, paragraphs 18(d) and 26. Agreed Order Appointing Receiver, paragraph 19.
	Comment: The Settlement Agreement was deemed effective as of the entry of the Order Approving Settlement Agreement, which was entered on June 13, 2019. Thus, the documents should have been provided by June 18, 2019. In addition to a default under paragraph 26 of the Settlement Agreement, this action also violates paragraph 19 of the Agreed Order Appointing Receiver which constitutes an additional default under the Settlement Agreement pursuant to paragraph 18(d).	
4.	Failure to turn over products from any Luxe entity or other materials purchased by Borrowers.	Settlement Agreement, paragraphs 18(d) and 22. Agreed Order Appointing Receiver, paragraphs 19, 25.

[2] These defaults have the potential to be cured, and despite specific deadlines for performance, ACRES may waive on a limited basis those deadlines in order to permit Borrower to cure such defaults.

	Default	Document
	Comment: ACRES provided Borrower with construction funds earmarked for the purchase of product from Luxe entities but the product has never been delivered or incorporated into the Property. Borrowers were expressly directed to turn over all materials purchased, including product from any Luxe entity but has failed to do so. Pursuant to paragraph 18(d) of the Settlement Agreement, any violation of the Agreed Order Appointing Receiver also constitutes a default under the Settlement Agreement.	

5.	Failure to turn over to Kapila all deposits and contracts, including $607,000 deposit to Commercial Concrete funded by ACRES on May 24, 2018.	Settlement Agreement, paragraphs 18(d) and 27. Agreed Order Appointing Receiver, paragraphs 19, 25.
	Comment: Pursuant to paragraph 18(d) of the Settlement Agreement, any violation of the Agreed Order Appointing Receiver also constitutes a default under the Settlement Agreement.	

C. Defaults that Are Not Curable.[3]

	Default	Document
1.	Permitting Frank Meak and Steve Louro/Louro Capital Lending, LLC to have an equity interest in the borrower entities.	Amended and Restated Loan Agreement, Sections 3.05, 15.09 and 16.01(3). Settlement Agreement, paragraph 18(c).
	Comment: Section 16.01(3) provides a "No Cure Period" for violation of negative Covenants in Article XV. Section 15.09 prohibits issuance of equity interest in Borrower. Meak and Louro acquired a $5.5 million equity interest by depositing their money into the DACA account, the sums required to be the "Borrowers Required Equity." Pursuant to paragraph 18(c) of the Settlement Agreement, a default under the Amended and Restated Loan Document also constitutes a default under the Settlement Agreement.	

2.	Alternatively, failure by Borrowers and Guarantors to fund the DACA account with their equity. Violation of representations and covenants as to equity contribution by Borrowers and Guarantors. Misrepresentations that the $5.5 million was equity when instead it was undisclosed debt, violating debt:equity ratios. Recording	Amended and Restated Loan Agreement, sections 1.01, 3.05, 16.01(2), 6.02(1), 15.01, 14.07(17). Settlement Agreement, paragraph 18(c).

[3] These defaults are not curable. ACRES may consider waiver of such default for the limited purpose of permitting the Borrower to proceed with the Loan Closing. However, waiver of such is for no other purpose and ACRES reserves the right to assert such defaults against any other party and reserves the defaults against the Borrower if the Borrower fails to close on the loan modification or defaults.

	Default	Document
	of mortgage and failure to remove it of record within 30 days of recording.	
	Comment: Borrowers concealed from ACRES that Borrowers did not fund the $5.5, but was instead a loan from Frank Meak and Louro Capital. Amended and Restated Loan provided that Borrowers had to deposit $5.5 million of their Interest Equity at the Closing. "Borrower's Initial Equity" is defined as $5,500,000 (Section 1.01). "Equity Requirement" is defined as "Borrower shall have deposited the full amount of Borrower's Initial Equity into the Deposit Account (Borrower's Initial Equity) as of the Closing Date. The Meak/Louro Capital mortgage is dated August 1, 2016. However, it intentionally was not recorded until January 14, 2019 so that ACRES would not know about the mortgage since entering into such mortgage was a breach of the Amended and Restated Loan Agreement. Section 3.05 of the Amended and Restated Loan Agreement required Borrower to "establish the Deposit Account (Borrower's Initial Equity) and deposit therein the full amount of "Borrower's Initial Equity as of the Closing Date." Pursuant to Section 16.01(2) of the Amended and Restated Loan Agreement, it is a default where any representation or warranty made in connection with any Loan Document is incorrect in any material respect as of the date it was made. Pursuant to 6.02(1) of the Amended and Restated Loan Agreement, Borrower covenanted and agreed that it "will not permit and will not enter into any agreement which provides for . . . any Encumbrance of any or all of the Property." Moreover, "Borrower shall, within 30 days following the filing of a Lien on the Property, promptly discharge of record" such Lien. Further, section 15.01 of the Amended and Restated Loan Agreement prohibits Borrower "to create, incur, or suffer to exist, any Lien." Pursuant to section 14.07(17) of the Amended and Restated Loan Agreement, Borrower was required to "[p]romptly after the occurrence thereof, [provide to ACRES] written notice of the assertion of any Lien." Section 16.01(13) prohibits any subordinate mortgage on the Property. Pursuant to paragraph 18(c) of the Settlement Agreement, a default under the Amended and Restated Loan Agreement constitutes a default under the Settlement Agreement.	

3.	Harry Zea, without authority signed as the "Authorized Agent" of The Bay Club of Naples LLC and The Bay Club of Naples II, LLC in filing Chapter 11 voluntary petitions on May 24, 2019 in *In re: The Bay Club of Naples, LLC* Case No. 9:19-bk-10116-FMD, and *In re: The Bay Club of Naples II, LLC* Case No. 9:19-bk-10117-FMD.	Amended and Restated Loan Agreement, section 16.01(6)(d). Settlement Agreement, paragraph 18(c).
	Comment: Section 16.01(6)(d) of the Amended and Restated Loan Agreement prohibits any Credit Party (i.e., Borrowers, Myles Alpert, or the Zohar Trust) from commencing "any proceeding under any bankruptcy" and section 16.01(6)(f) prohibits any Credit Party from taking any actions indicating "its consent to, approval of or acquiescence in any such petition [or] application . . . .". Pursuant to paragraph 18(c) of the Settlement Agreement, any default under the Amended and Restated Loan Agreement also constitutes a default under the Settlement Agreement.	

4.	Zea's presentation and announcement in Court at the October 25, 2019 hearing of his joinder in the creditors' petitions for involuntary bankruptcy.	Amended and Restated Loan Agreement, section 16.01(6)(f). Agreed Order Appointing Receiver, paragraph 24.

	Default	Document
		Settlement Agreement, paragraphs 18(c) and 18(d).
	Comment: Section 16.01(6)(f) of the Amended and Restated Loan Agreement prohibits any Credit Party from taking any actions indicating its "consent to [or] approval of" any petition for bankruptcy filed against the Borrowers, or which petition remains undismissed or unstayed for 60 days or more. Pursuant to paragraphs 18(c) and 18(d) of the Settlement Agreement, any default under the Amended and Restated Loan Agreement or violation of the Agreed Order Appointing Receiver also constitutes a default under the Settlement Agreement.	
5.	Harry Zea solicited Salvatori Law Office, PLLC to join in the petitions for involuntary bankruptcy.	Amended and Restated Loan Agreement, section 16.01(6)(f). Settlement Agreement, paragraph 18(c).
	Comment: Section 16.01(6)(f) of the Amended and Restated Loan Agreement prohibits any Credit Party from taking any actions indicating its "consent to, approval of or acquiescence in" any petition for bankruptcy filed against Borrowers. Salvatori testified that Harry Zea came to meet Salvatori and asked that Salvatori join the petition as a creditor. Deposition of Leo J. Salvatori, as corporate representative of Salvatori Law Office, PLLC, taken on October 21, 2019, at p. 36, lines 1-9. Pursuant to paragraph 18(c) of the Settlement Agreement, any default under the Amended and Restated Loan Agreement also constitutes a default under the Settlement Agreement.	
6.	Failure to obtain the dismissal of the involuntary petitions for bankruptcy within 60 days from filing.	Amended and Restated Loan Agreement, section 16.01(6)(e). Settlement Agreement, paragraph 18(c).
	Comment: Section 16.01(6)(e) requires that any involuntary petition for bankruptcy filed against the Borrowers not remain pending 60 days or more, which has occurred in this case. Pursuant to paragraph 18(c) of the Settlement Agreement, any default under the Amended and Restated Loan Agreement also constitutes a default under the Settlement Agreement.	
7.	Actions and communications by Harry Zea acting on behalf of The Bay Club entities in violation of Kapila having sole authority as the CRO and sole manager. Harry Zea and Myles Alpert are not to be involved in any capacity or exercise any authority. Harry Zea's actions include comments to the press, communications to third parties; filing voluntary bankruptcy petitions; taking actions in bankruptcy court challenging authority of Kapila; taking actions that impede the ability of Kapila to	Settlement Agreement, paragraphs 2, 10, 18(d). Agreed Order Appointing Receiver, paragraph 24.

	Default	Document
	perform his duties as Receiver and CRO, including performing the terms of the Settlement Agreement.	
	Comment: Harry Zea comments throughout the August 13, 2019 article in the *Naples Daily News* as if he were in control of the project. Zea stated that "he chose the receiver to take over the project, describing him as more of a project supervisor." Zea also made other misrepresentations, including "There is no foreclosure." Pursuant to paragraph 18(d) of the Settlement Agreement, any violation of the Agreed Order Appointing Receiver also constitutes a default under the Settlement Agreement.	

8.	Bill Must, as agent for Borrower and Guarantor, took action with the City of Naples to extend the permit in the name of "The Rock Custom Homes."	Settlement Agreement, paragraphs 18(d) and 22. Agreed Order Approving Receiver, paragraph 24.
	Comment: Principals of Borrower and Guarantors are required to take no actions on behalf of the Bay Club entities regarding permits or entitlements and are responsible for their agents' actions as well. William Must attempted to obtain the extension of the permit on the South Building in lieu of the Receiver. Deposition of William Must, as corporate representative of The Rock Custom Homes, taken on August 22, 2019, at p. 41, lines 19–25 through p. 42, lines 1-5. In addition to a default under paragraph 22 of the Settlement Agreement, this action also violates paragraph 19 of the Agreed Order Appointing Receiver which constitutes an additional default under the Settlement Agreement pursuant to paragraph 18(d).	

9.	Violation of state court injunction enjoining Borrower, Guarantors and their agents "from interfering in any manner with the Mortgaged Property, possession of the Receiver or with the Receiver's performance of his duties." Harry Zea has taken actions in the bankruptcy cases to challenge the authority of Kapila and to undermine Kapila's efforts to perform the terms of the Settlement Agreement.	Agreed Order Approving Receiver, paragraph 20. Settlement Agreement, paragraph 18(d).
	Comment: Pursuant to paragraph 18(d) of the Settlement Agreement, any violation of the Agreed Order Appointing Receiver also constitutes a default under the Settlement Agreement.	